

# Land of the Free: Prison Reform Following the War on Drugs

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“America’s public enemy number one in the United States is drug abuse. In order to fight and defeat this enemy, it is necessary to wage a new, all-out offensive.”

- President Richard Nixon, 1971

Thus began the so-called “War on Drugs,” a term coined by the media in response to President Richard Nixon’s speech and policy initiative aimed at eradicating drug use in the United States. Since its beginnings in 1971, the war on drugs has been largely unsuccessful in reducing drug use. Instead, it has had many unintended consequences, one of which is a huge increase in the federal prison population over the past 40 years. Despite making up only five percent of the world population, the U.S. is home to 25 percent of its prisoners.<sup>1</sup> Since the 1970s, the prison population in the U.S. has skyrocketed due to the implementation of War on Drugs policies. According to the Congressional Research Service, the federal prison population has increased 800 percent over this period of time, which has resulted in overcrowding, overspending and high unemployment rates for past offenders. Perhaps worst of all is that, in addition to the economic and social consequences, war on drugs policies have been unsuccessful in reducing crime rates, thus indicating their failure in providing for a safer society.<sup>2</sup> In response to these issues, bipartisan efforts for federal prison reform are beginning to take shape in Congress. These efforts, however, have been met with strict opposition from traditional tough-

on-crime Republicans, and a prison reform bill has yet to pass.

The main reason for the failure of the War on Drugs can be attributed in part to mandatory minimum sentencing laws. Implemented as a part of the Anti-Drug Abuse Act of 1986, these one-size-fits-all policies require a certain punishment based on the amount and type of drug in possession without allowing for flexibility based on context.<sup>3</sup> As a result, many prisoners are serving long sentences for nonviolent, first-time offenses. As of Sept. 18, 2014, the United States Bureau of Prisons reported its total population to be 214,506 inmates. Of this population, nearly half are being detained on account of drug-related offenses.

In addition to causing a large increase in the prison population, U.S. drug policies have also led to a great disparity between convictions of whites and people of color. Whether this was intended or not, it’s clear that the current system is unfair to minorities, especially African Americans, who are 2.8 to 5.5 times more likely to be arrested on drug charges than whites.<sup>4</sup> Despite this rate, studies conducted by the U.S. Department of Health and Human Services and the National Institute of Health have shown that drug use between whites and African Americans is roughly equal.<sup>5</sup> In fact, white youth

between ages 12 and 17 are more likely to use drugs than African Americans of the same age, but blacks are arrested 10 times as often.<sup>6</sup> As a result, young African Americans are more likely to have criminal records, making it harder for them to earn jobs and receive an education. A study conducted by the Chicago Urban League found that 60 percent of employers would not hire an ex-offender, and African Americans are more susceptible to discrimination from potential employers than whites on average. According to Harvard sociology professor Bruce Western, being unable to find stable employment due to a criminal record makes former prisoners more susceptible to resorting to crime and reentering the system, creating a never-ending cycle of crime and dependence. Keeping young African Americans out of prison in the first place, he argues, is the best way to remedy the effects the War on Drugs has had on black communities.<sup>7</sup>

Of all released prisoners in the U.S., two-thirds will be rearrested within the following three years, and half will go back to prison.<sup>8</sup> A study conducted by the Urban Institute found that eight months after release, only 45 percent of former inmates were currently employed, due in part to the unwillingness of employers to hire someone with a criminal

record. According to the study, this makes it more likely that released prisoners will find an income through illegal means. The Urban Institute also found that recidivism rates are much higher for prisoners suffering from mental health issues, who, according to the Human Rights Watch, make up 56 percent of the U.S. inmate population. If they meet certain qualifications, prisoners are treated for these illnesses while serving their sentences, but continuing treatment can be discontinued or delayed upon their release.<sup>9</sup> Because mental illnesses often contribute to arrests, being untreated for these conditions increases the likelihood that a former inmate will be arrested again. The Bureau of Justice Statistics report that 76 percent of mentally ill inmates in federal prison have prior convictions compared to 61 percent of other inmates. With the right programs in place, prisons could better prepare their inmates to reacclimatize to society by increasing their likelihood of finding employment.<sup>10</sup> As such, inmates would be less likely to reenter the system after being given a second chance to be productive citizens.

What effect have all of these factors had on the condition of prisons themselves? One obvious problem resulting from the War on Drugs is prison

overcrowding. The Bureau of Prisons is now 40 percent overcapacity, which poses a potential threat of violence to prisoners and guards alike as the ratio of prisoners to correctional workers increases.<sup>11</sup> Furthermore, the cost of maintaining federal prisons is also a concern as well. On average, it costs about \$30,000 to house an inmate for one year, and in 2012, the total cost of incarceration nationwide was \$64 billion.<sup>12 13</sup> These costs will only increase should the prison population continue to rise.

In response to problems of inadequately prepared inmates rejoining society, the general public is beginning to change its views on the goals of prisons, hoping that they become rehabilitative rather than punitive. According to a recent poll, about two-thirds of Americans support giving drug abusers access to treatment rather than seeking criminal prosecution that could result in spending time behind bars.<sup>14</sup> This is the approach taken in most European countries, including Germany and the Netherlands. In these countries, incarceration rates are one-tenth of those in the U.S., sentences are shorter and the goals of prisons are aimed toward social reintegration.<sup>15</sup> U.S. state prisons are beginning to follow their lead, but the federal system has yet to achieve meaningful reform.<sup>16</sup>

Compared to other issues, reforming the federal prison system clearly appeals to both parties economically and socially. Why, then, has it yet to happen? Traditionally, prison reform has been viewed as a platform of the Democrats, who are more likely to be sympathetic to criminals than their tough-on-crime Republican counterparts. This is still evident during recent congressional efforts for prison reform, where Republicans with traditional views on crime have been unwilling to compromise. They argue that current sentencing laws are fair and are only used in the most high-risk cases.<sup>17</sup> The political climate, however, is changing to where reform is in the best interests of both parties.

Along with the moral reasons for fixing the system, prison reform makes sense economically. By eliminating mandatory minimum sentencing, federal spending will decrease along with the prison population. Rather than spending billions of dollars on a failing prison system, both liberals and conservatives will be able to invest their taxpayers' dollars more effectively. Recognizing these flaws in the system, in 2013 Attorney General Eric Holder voiced his support for bipartisan reform by announcing that judges would have more flexibility in sentencing for nonviolent, low-level drug

offenders.<sup>18</sup> Some of the most vocal advocates for prison reform, however, have been Republicans who are beginning to change their views on prison reform. In a 2011 op-ed in *The Washington Post*, Newt Gingrich stated, "We can no longer afford business as usual with prisons. The criminal justice system is broken, and conservatives must lead the way in fixing it." This was radical change for Gingrich, who, as Speaker of the House in 1996, sponsored a bill that would've required a minimum life sentence, and in some cases the death penalty, for those found guilty of bringing modest amounts of drugs into the U.S.<sup>19</sup> When asked about the failed bill in 2011, Gingrich stated that he still supports such measures for leaders of large cartels, but in most cases rehabilitation is preferable to imprisonment.<sup>20</sup> Similarly, New Jersey Governor Chris Christie has acknowledged the need to "end the failed war on drugs that believes that incarceration is the cure of every ill caused by drug abuse."<sup>21</sup> Of all advocates for prison reform, one of the most involved policy-wise has been Republican Senator Rand Paul of Kentucky. Last year, Sen. Paul teamed up with Democrat Cory Booker of New Jersey to sponsor the Record Expungement Designed to Enhance Employment (REDEEM) Act, which would've

lessened the punishments against and expunged the records of nonviolent and juvenile offenders.<sup>22</sup> He was also a co-sponsor of two bipartisan bills: the Recidivism Reduction and Public Safety Act of 2014 and the Smarter Sentencing Act of 2014. Part of the latter was aimed at reducing mandatory minimum sentences and reducing punishments due to the former sentencing disparities between crack and powder cocaine — one of the most critiqued policies due to its racial implications.<sup>23</sup>

Sen. Paul himself has admitted that one of his goals in promoting prison reform is to gain electoral support from African American voters.<sup>24</sup> In a speech at Howard College, he said, "We should not have drug laws or a court system that disproportionately punishes the black community," and argued that the values of the Republican Party match up with those of African Americans. While it has yet to be seen if Sen. Paul will be successful in his efforts, he's leading the way in creating a new electoral image for the Republican Party on prison reform.

Despite Paul's efforts, though, not all Republicans are rallying to support prison reform. In an op-ed in *The Washington Times* op-ed, Florida Senator Marco Rubio argued that "reform should not begin with the careless

weakening of drug laws that have done so much to end the violence and the mayhem that plagued American cities in prior decades.” Like many of his Republican counterparts, Rubio condemns Holder for his relaxed stance on drug laws, and argues that they have have led to decreased crime.<sup>25</sup> One of the early frontrunners for the 2016 GOP nomination, Rubio may be missing an opportunity to bolster his presidential bid due to his outdated stance on drug laws compared to other potential Republican candidates, such as Paul.<sup>26</sup> Congress as a whole is still divided on the issue as well. Both the Recidivism Reduction and Public Safety Act and the Smarter Sentencing Act stalled, and it remains to be seen if they’ll progress any further in 2015.<sup>27</sup>

Despite minor setbacks, prison reform is poised to become a more prominent issue in the near future. A 2014 survey conducted by the Public Religion Research Institute found that 56 percent of Americans disagree that African Americans and other minorities receive equal treatment as whites in the criminal justice system, which is a nine percent increase from just 2013.<sup>28</sup> Of all groups surveyed, the largest increase in opinion was in young adults aged 18-29, with an increase from 42 percent to 63 percent. Rates for both Independents and Republicans increased substantially as well, an encouraging sign for those pushing for reform. As the public becomes increasingly aware of the injustices of the current system, prison reform is more likely to be

achieved. And while previous efforts have stalled, future bipartisan efforts in Congress to pass a reform bill may indicate that reform is increasingly possible in the future.

Since the implications of War on Drugs policies are now well known, reform of mandatory minimum sentencing laws and prisons is entirely necessary. The prison reform movement is gaining momentum both in the general public and in government circles. As both become more aware of the flaws of the current criminal justice system, prison reform can proceed and the bleak period of America’s mass incarceration will finally come to an end.

<sup>1</sup> Adam Liptak, “U.S. Prison Population Dwarfs that of Other Nations,” *The New York Times*, April 23, 2008, Internet (accessed September 23, 2014).

<sup>2</sup> Elizabeth Gudrais, “The Prison Problem,” *Harvard Magazine*, March-April 2013, Internet (accessed September 23, 2014).

<sup>3</sup> PBS, “Thirty Years of America’s Drug War,” PBS, Internet (accessed September 23, 2014).

<sup>4</sup> Human Rights Watch, “Decades of Disparity: Drug Arrests and Race in the United States,” *Human Rights Watch* March 2, 2009, Internet (accessed September 23, 2014).

<sup>5</sup> U.S. Department of Health and Human Services, National Institute of Health, “Drug Use Among Ethnic and

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<sup>6</sup> Maia Szalavitz, “Study: Whites More Likely to Abuse Drugs Than Blacks,” *Time*, November 7, 2011, Internet (accessed September 23, 2014).

<sup>7</sup> Gudrais, *Ibid*.

<sup>8</sup> Gudrais, *Ibid*.

<sup>9</sup> Gudrais, *Ibid*.

<sup>10</sup> Christy Vishner, Sara Debus, and Jennifer Yahner, “Employment after Prison: A Longitudinal Study of Releases in Three States,” *The Urban Institute*, October 2008, Internet (accessed September 23, 2014).

<sup>11</sup> D.P. Farrington and C.P. Nuttall, “Prison Size, Overcrowding, Prison Violence, and Recidivism,” *Journal of*

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<sup>12</sup> Joe Palazzolo, “Cost of Housing Federal Prisoners Continues to Rise,” *Wall Street Journal*, March 15, 2013, Internet (accessed September 23, 2014).

<sup>13</sup> CBS News, “The Cost of a Nation of Incarceration,” *CBS News*, April 23, 2012, Internet (accessed September 23, 2014).

<sup>14</sup> Susan Heavey, “Majority of Americans want to treat, not jail, drug users: survey,” *Reuters*, April 2, 2012, Internet (accessed September 23, 2014).

<sup>15</sup> Ram Subramanian and Alison Shames, “Sentencing and Prison Practices in Germany and the Netherlands: Implications for the

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<sup>16</sup> The New York Times Editorial Board, "Lessons From European Prisons," *The New York Times*, November 7, 2013, Internet (accessed September 23, 2014).

<sup>17</sup> The New York Times Editorial Board, "Sentencing Reform Runs Aground," *Ibid.*

<sup>18</sup> Sari Horwitz, "Holder Seeks to Avert Mandatory Minimum Sentences for Some Low-Level Drug Offenders," *The Washington Post*, August 12, 2013, Internet (accessed October 7, 2014).

<sup>19</sup> Conor Friedersdorf, "When Newt Gingrich Wanted to Execute Non-Violent Pot Smugglers," *The Atlantic*, January 24 2012, Internet (accessed November 5, 2014).

<sup>20</sup> Chris Moody, "Newt Gingrich on Drug Laws, Entitlements and Campaigning: The Yahoo News

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<sup>21</sup> Brent Johnson, "Chris Christie's 2014 Inauguration: Read the Governor's Speech," *NJ.com*, January 21, 2014, Internet (accessed September 23, 2014).

<sup>22</sup> Heather Haddon, "Sens. Cory Booker and Rand Paul Team Up On Nonviolent Offender Rules," *The Wall Street Journal*, July 8, 2014, Internet (accessed September 23, 2014).

<sup>23</sup> Carol Cratty, Mary Snow, and Meghan Rafferty, "New Rules Slashing Crack Cocaine Sentences Go Into Effect," *CNN*, November 2, 2011, Internet (accessed September 23, 2014).

<sup>24</sup> "Rand Paul Delivers Speech at Howard University," *The Wall Street Journal*, April 10, 2013, Internet (accessed September 23, 2014).

<sup>25</sup> Marco Rubio, "Wanted: An Attorney General Committed to the Constitution," *The Washington Times*, October 2, 2014, Internet (accessed November 5, 2014).

<sup>26</sup> Olivia Nuzzi, "Marco Rubio Apparently Isn't Buying Into Criminal-Justice Reforms," *Time*, October 3, 2014, Internet (accessed October 6, 2014).

<sup>27</sup> The New York Times Editorial Board, "Sentencing Reform Runs Aground," *The New York Times*, June 21, 2014, Internet (accessed September 23, 2014).

<sup>28</sup> Public Religion Research Institute, "Economic Insecurity, Rising Inequality, and Doubts about the Future: Findings from the 2014 American Values Survey," *Public Religion Research Institute*, September 23, 2014, Internet (accessed September 25, 2014).